IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE V.ESWARAIAH**

**WRIT PETITION No. 4141 of 2005**

Between:

M. Shyam Sunder Reddy

**..... PETITIONER**

AND

State Bank of Hyderabad,

Jammikunta Branch, Karimnagar District,

Rep. by its Branch Manager/ Authorised Officer

**.....RESPONDENT**

**ORDER:**

The petitioner questioning the action of the respondent in invoking jurisdiction of the Senior Civil Judge, Huzurabad by filing O.S.No.61/2004 and trying to auction the property in question by invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), as illegal and arbitrary, filed this writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

The case of the petitioner is that though the respondent filed O.S.No.61/2004 on the file of the Senior Civil Judge, Huzurabad for recovery of Rs.7,49,000/- and it is pending, the respondent initiated proceedings under SARFAESI Act, which cannot be maintainable under law.

The learned counsel for the respondent submits that though the respondent bank availed remedy under Recovery Act, nothing prevents the respondent from invoking the provisions of SARFAESI Act. In support of this contentions, he relied on a judgment of this Court in ***Hotel Rajahamsa International & ors., Vs. Authorised Officer, Indian Overseas Bank & Anr.,*** wherein this Court held:

> "Even if the Bank has already availed remedy under Recovery Act, nothing prevents them for invoking the provisions of sub-sections (1) and (2) of Section 13 of the SARFAESI Act."

The same analogy will applies to the facts of the case on hand. In the instant case, as the amount is less than 10 lakhs, the respondent filed suit before the Civil Court. Following the aforesaid judgment, the respondent can invoke the provisions of SARFAESI Act for recovery of amount due from the petitioner. Therefore, the writ petition fails and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

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**V.ESWARAIAH,J**

Dated: 21.11.2005

Dsr